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NO.

IN THE

Supreme Court of the United States

JANUARY TERM 1981

HONDA MOTOR COMPANY, LTD.,

Appellant,

vs.

WALTER P. COONS,

Appellee.

On Appeal from the Superior Court of New Jersey, Appellate Division

JURISDICTIONAL STATEMENT

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Questions Presented by Appeal

The decision of the New Jersey Superior Court, Appellate Division, below held that a foreign corporation, subject to "long-arm" *in personam* jurisdiction in the State by virtue of the relationship with its New Jersey distributor, may nevertheless be permanently barred from asserting the statute of limitations defense under that State's tolling statute relating to actions brought against foreign corporations. The New Jersey Appellate Division has therefore upheld the constitutionality of the State's tolling statute, N.J.S.A. 2A:14-22).

This result violates both the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. It denies the benefit of a statute of limitations to a foreign corporation, unregistered to do business in New Jersey but deemed subject to that State's jurisdiction, while the same benefit is readily available both to domestic corporations and to foreign corporations registered to do business in the State. This appeal questions whether it is constitutionally permissible for a State to treat a foreign corporation as having minimum contacts sufficient for exercising *in personam* jurisdiction but insufficient for access to the statute of limitations.

The present appeal raises an issue identical with, or similar to that currently pending before this Court in *G. D. Searle & Co.* v. *Cohn,* cert. granted, 49 U.S.L.W. 3779 (U.S. April 20, 1981) (No. 80-644); *Kelsey-Hayes, Inc.* v. *Hopkins,* petition for certiorari filed, 49 U.S.L.W. 3448 (U.S. October 21, 1980) (No. 80-663) and *Maren Engineering Corp.* v. *Velmohos,* jurisdictional statement filed, 49 U.S.L.W. 3305 (U.S. October 17, 1980) (No. 80-629), regarding the constitutionality of the New Jersey tolling statute where applied against a foreign corporation amenable to service of process under that State's "long-arm" rule.

Parties to the Proceeding

1. Walter P. Coons, Plaintiff-Appellee
2. Honda Motor Company, Ltd. of Japan, Defendant-Appellant
3. American Honda Motor Company, Inc., Defendant below (not a party to appeal; summary judgment granted below on grounds of expiration of statute of limitations)
4. Richard Roe, Inc., et al., Defendants below. (unnamed and unserved parties)

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JURISDICTIONAL STATEMENT

Opinions Below

Appellant requests review of the decision of the New Jersey Superior Court, Appellate Division, reported *sub nom. Coons* v. *Honda Motor Company, Ltd. of Japan,* 176 N.J. Super. 575, 424 A2d 446 (App. Div. 1980). The Court's opinion is submitted herewith as Appendix "A", p. 1a, *infra.*

The Order of the trial court was rendered without a written opinion and is reproduced herewith as Appendix "B", p. 11a, *infra.*

Grounds for the Invoking of the Jurisdiction of this Court

The New Jersey Superior Court, Appellate Division, affirmed the judgment of the State's trial court which held that the statute of limitations was not available as a defense to the appellant corporation. The judgment of the Appellate Division was entered on *December 29, 1980.* A timely motion for leave to appeal was denied by the New Jersey Supreme Court on *March 31, 1981.* That Order is submitted herewith as Appendix "C", p. 13a, *infra.*

The notice of appeal to the Supreme Court of the United States from the judgment of the Superior Court of New Jersey, Appellate Division, was filed with the Clerk of the State Supreme Court and with the Clerk of the Superior Court of New Jersey, Appellate Division, on *May 11, 1981,* and is submitted herewith as Appendix "D", p. 14a, *infra.*

The judgment of the New Jersey Superior Court, Appellate Division, upheld the validity of a State statute, N.J.S.A. 2A:14-22, against federal constitutional challenge. The New Jersey Supreme Court refused further appellate review, making the decision of the intermediate Appellate Court the final judgment rendered by the State courts for purposes of the United State's Supreme Court's appellate jurisdiction. *McCarthy* v. *Philadelphia Civil Service Commission,* 424 U.S. 645 (1976); *Cohen* v. *California,* 403 U.S. 15 (1971); *Gallick* v. *Baltimore and Ohio Railroad Company,* 372 U.S. 108 (1963).

Accordingly, this Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(2) which provides in pertinent part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Constitutional Provisions and Rules Involved

The Fourteenth Amendment to the United States Constitution:

> Section 1.
>
> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The New Jersey "Tolling Statute", N.J.S.A. 2A:14-22:

> "If any person against whom there is any of the causes of action specified in sections 2A:14-1 to

2A:14-5 and 2A:14-8, or if any surety against whom there is a cause of action specified in any of the sections of article 2 of this chapter, is not a resident of this state when such cause of action accrues, or removes from this state after the accrual thereof and before the expiration of the times limited in said section, or if any corporation or corporate surety not organized under the laws of this state, against whom there is such a cause of action, is not represented in this state by any person or officer upon whom summons or other original process may be served, when such cause of action accrues or at any time before the expiration of the times so limited, the time or times during which such person or surety is not residing within this state or such corporation or corporate surety is not so represented within this state shall not be computed as part of the periods of time within which such an action is required to be commenced by the section. The person entitled to any such action may commence the same after the accrual of the cause therefor, within the period of time limited therefor by said section, exclusive of such time or times of nonresidence or nonrepresentation."

New Jersey's "Long-Arm" Rule, N.J.R. 4:4-4:

"Service of summons, writs and complaints shall be made as follows:

* * *

(c) Corporations, Partnerships, and Associations.

(1) Corporations. Upon a domestic or foreign corporation, by serving, in the manner prescribed in paragraph (a), either an officer, director, trustee, or managing or general agent; or any person authorized by appointment or by law to receive serv-

> ice of process on behalf of the corporation; or the person at the registered office of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon the person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then upon any servant of the corporation within this State acting in the discharge of his duties. If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personal service cannot be made upon any of the foregoing and if the corporation is a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office."

New Jersey's Statute of Limitations for Personal Injury Actions, N.J.S.A. 2A:14-2:

> "Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this state shall be commenced within 2 years next after the cause of any such action shall have accrued."

Statement of the Case

On October 30, 1974, while operating his Honda CB 350 motorcycle, Walter P. Coons was involved in an accident when his motorcycle fell over due to a tire blowout. The gas cap allegedly opened in the accident, a fire ensued and he was injured.

He thereafter commenced a products liability action on October 30, 1978, four years after the accident. The defendant, American Honda Motor Co. was served with the summons and complaint by mail at its Moorestown, New Jersey facility. American Honda is the wholly owned American distributor for products manufactured by the defendant Honda Motor Co., Ltd., a Japanese corporation not authorized to do business in New Jersey. American Honda, while authorized to do business in New Jersey, is a California corporation with its principal office located in Gardena, California.

Service was never attempted nor effected upon Honda Motor Co., Ltd. until after November 30, 1979, one year later, when an Order was entered allowing substituted service upon a Washington D.C. law firm acting as agents for Honda Ltd., in accordance with the terms of the *Traffic and Motor Vehicle Safety Act,* 15 U.S.C. 1399(e).

In New Jersey, the statute of limitations for personal injury actions, N.J.S.A. 2A:14-2, requires that suits be commenced within two years of the accrual of the cause of action. Suits are commenced, and the statute of limitations tolled, by the filing of a Complaint with the Clerk of the Superior Court, N.J.R. 4:2-2, after which time the summons and complaint are served upon the defendant.

The plaintiff failed to file his Complaint within the two-year statute of limitations applicable to this action, and was therefore barred from recovery. Plaintiff sought, however, to avoid the bar of the statute of limitations by invoking New Jersey's "discovery" rule, in his Complaint. Under the New Jersey "discovery" rule, the statute does not begin to run until the plaintiff discovers, or should have discovered by an exercise of reasonable diligence, that he may have a basis for an actionable claim. *Lopez* v. *Swyer,* 62 N.J. 267, 300 A2d 563 (1973).

In an answer filed on its behalf, American Honda asserted the statute of limitations as a defense. The Trial Court conducted a hearing required by *Lopez* and by Order entered December 26, 1979, granted American Hondas' motion for summary judgment dismissing the complaint against it as barred by the statute of limitations.

An answer was filed on behalf of Honda Motor Company, Ltd. which included as defenses that the New Jersey Court failed to have *in personam* jurisdiction, and in the alternative, that the plaintiff's claims were barred by the statute of limitations. Honda Motor Company, Ltd. then moved to dismiss the Complaint against it on these grounds, stating further that plaintiff was collaterally estopped as to the matter of the statute of limitations due to the Court's ruling in favor of American Honda Motor Co.

The plaintiff opposed Honda Motor Company Ltd's motion for dismissal of he Complaint, contending that under New Jersey's tolling statute he was not bound by the two year statute of limitations due to defendants nonrepresented status. At this juncture, the Appellant raised the constitutional issue against the application of the tolling provision to the instant matter, assuming *arguendo* that *in personam* jurisdiction was found to exist.

By Order entered on or about February 25, 1980, the Trial Court denied Honda Motor Company, Ltd.'s motion to dismiss. That court held that there was *in personam* jurisdiction and that based upon the ruling of the New Jersey Appellate Division in *Velmohos* v. *Maren Engineering Corp.*, 168 N.J. Super. 520, 403 A2d 927 (App. Div. 1979) the Appellant was not entitled to the benefit of the statute of limtations which had earlier been granted to American Honda.

Honda Motor Company, Ltd. then filed a motion for leave to appeal with the New Jersey Appellate Division, seeking reversal of the trial court's ruling. The intermediate Appellate Court granted permission for review and subsequently affirmed the Order of the trial court. The New Jersey Appellate Division, relying upon the ruling of the State Supreme Court in *Velmohos* v. *Maren Engineering Corp.*, 83 NJ 282, 416 A2d 372 (1980), held that the tolling statute did not violate the Equal Protection Clause of the Fourteenth Amendment where applied to foreign corporations unregistered in New Jersey.

Thereafter, Honda Motor Company, Ltd, moved for leave to appeal to the New Jersey Supreme Court. On or about March 31, 1981 the motion was denied, the highest state court declining to review the matter.

The federal constitutional issue of equal protection, initially raised by the Appellant before the trial court, was consistently asserted through the intermediate and highest state courts. The Appellant raised the additional federal constitutional issue of the due process clause before the New Jersey Supreme Court, which declined to consider the merits of either claim.

The Questions Presented are Substantial

The constitutional soundness of a State tolling statute, that operates to deny a non-represented foreign corporation any access to a statute of limitations, where juxtaposed with the modern concepts of a State's *in personam* jurisdiction, is a novel and substantial question. It has never been addressed by this Court. The issue will be argued before the Court next term in *G. D. Searle & Co.* v. *Cohn*, cert. granted, 49 USLW 3779 (US April 20, 1981) (No. 80-644). It also arises in *Kelsey Hayes, Inc.* v. *Hop-*

kins, petition for certiorari filed, 49 USLW 3448 (U.S. October 21, 1980) (No. 80-663) and in *Maren Engineering Corp.* v. *Velmohos,* jurisdictional statement filed, 49 USLW 3305 (U.S. October 17, 1980) (No. 80-629) which are currently pending before the Court.

It is firmly embedded in our jurisprudence that a State may exercise *"in personam"* jurisdiction over a nonresident defendant if predicated upon sufficient minimum contacts between the defendant and the forum State so that maintenance of the suit would not offend "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington,* 326 US 310, 316 (1945). This Court has often recognized that certain fundamental changes brought about by modern technology warranted, and compelled, a substantial relaxation of the traditional rule which had restricted a State's personal jurisdiction to its own territorial limits. *World-Wide Volkswagen* v. *Woodson,* 444 U.S. 286 (1980); *Hanson* v. *Denckla,* 357 US 235 (1958); *McGee* v. *International Life Ins. Co.,* 355 US 220, 222-223 (1957); *International Shoe Co.* v. *Washington, supra.*

The reach of a State's extraterritorial jurisdiction under the due process clause was clarified by this Court in *World-Wide Volkswagen* v. *Woodson, supra,* such that it is not unreasonable for a State to assert personal jurisdiction over a non-resident corporation "if the sale of a product of a manufacturer arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States." However, as Justice White instructed, at p. 297, the requisite foreseeability contemplated under the due process clause which gives rise to personal jurisdiction is not the mere likelihood that a product will find its way into the forum State, but rather it is "that the defendant's conduct and connection with the

forum are such that he should reasonably anticipate being hauled into Court there."

Similarly, under New Jersey's "long-arm" rule, N.J.R. 4:4-4(c)(1), service of process upon out-of-state defendants is authorized "to the uttermost limits permitted by the United States Constitution." *Avdel Corporation* v. *Mecure*, 58 NJ 264, 268, 277 A2d 207, 209 (1971).

The New Jersey Appellate Division below determined that a foreign corporation, not conducting business within New Jersey, could be brought into the State's courts predicated upon the foreseeability that its products will reach an ultimate consumer there. Accordingly, once a State subjects a foreign corporation to its laws, it must then allow that corporation the same access to a statute of limitations which is afforded to domestic corporations, and to other foreign corporations who by chance may maintain registered agents within the State. Yet, the intermediate Appellate Court below ruled that the criterion which would give rise to *in personam* jurisdiction over Honda Motor Company, Ltd. was insufficient to allow that out-of-state corporation the benefit of the two-year statute of limitations. That Court concluded that the statute of limitations would never be available to such a defendant. This novel decision deprives the Appellant of its Constitutional rights to due process and equal protection of the law. It requires review and reversal by this Court.

Under the Fourteenth Amendment's Equal Protection Clause, a statutory classification must bear some rational relationship to a legitimate State purpose. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955). A State may not discriminate between persons similarly situated by means of a statute which designates the different classes on the basis of criteria wholly unrelated to the objective of that statute. *Reed* v. *Reed*, 404 U.S. 71, 75-76 (1971).

New Jersey's distinction between Appellant and its co-defendant American Honda for statute of limitations purposes does not manifest a rational basis. Both companies are foreign corporations similarly situated. Honda Motor Company, Ltd., was deemed amenable to service under New Jersey's "long-arm" rule by virtue of the manufacturer-distributor relationship which it maintained with its wholly-owned subsidiary, American Honda. In the alternative, as the Appellant asserted in the courts below, service of process could also have been effected under the Multilateral Treaty *Service Abroad of Judicial and Extra Judicial Documents,* 30 UST 361 (The Hague Convention, November 15, 1965).

The means available for service, when taken together with Honda Motor Company, Ltd.'s visibility by virtue of its products and the advertising of American Honda, makes the tolling of the statute of limitations wholly unreasonable. Honda Motor Company, Ltd consistently maintained a patent existence. By seeking to have its products reach ultimate consumers within New Jersey, the Appellant's conduct concomitantly facilitated servise of process. Yet despite the ease by which service of process could have been made, American Honda successfully asserted the bar of the statute of limitations while Honda Ltd was denied relief. Such a discriminatory result violates the equal protection clause, since a classification, to be allowed to stand, "must be reasonable not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920).

The rationale of the New Jersey Appellate Division focused upon the presumed difficulty imposed upon plain-

tiffs in effectuating service upon out-of-state defendants. This reasoning is similarly inconsistent with the due process clause of the United States Constitution which condones the use of State power assuming that the exercise of that power bears a rational relationship to a legitimate societal interest. *Richardson* v. *Belcher,* 404 U.S. 78, 81 (1971); *Lochner* v. *New York,* 198 U.S. 45, 53 (1905). As the State's power to subject a foreign corporation to its "long-arm" jurisdiction increases, the legitimacy of the State's denying that nonresident defendant the repose of the statute of limitations becomes less defensible. The purported objective of New Jersey's tolling statute is not rationally related to the substantial impact which this exercise of State power affects upon distant corporations, as the State's "long-arm" reach expands in light of modern circumstances.

CONCLUSION

For the foregoing reasons, it is respectfully urged that this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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APPENDIX A

Opinion of the Superior Court of New Jersey, Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-2857-79

WALTER P. COONS,

Plaintiff-Respondent,

v.

HONDA MOTOR COMPANY, LTD., of JAPAN, a corporation,

Defendant-Appellant.

Argued December 9, 1980—Decided Dec 29 1980

Before Judges Fritz, Polow and Joelson.

On appeal from Interlocutory Order of the Superior Court of New Jersey, Law Division, Middlesex County.

John I. Lisowski, argued the cause for appellant (Morgan, Melhuish, Monaghan & Spielvogel, John I. Lisowski, of counsel and on the brief).

Robert H. Jaffe argued the cause for respondent (Robert H. Jaffe and Howard G. Schlesinger on the brief).

Appendix A

The opinion of the court was delivered by

POLOW, J.A.D.

On October 30, 1974, plaintiff suffered serious injuries when thrown from his 1972 Honda CB350 motorcycle. In his complaint, filed October 30, 1978, he demanded damages from the designer-manufacturer, Honda Motor Co., Ltd. of Japan (Honda Ltd.) and its distributor, American Honda Motor Co., Inc. (American Honda) alleging that he suffered severe burns when the defectively designed gas cap opened during the accident and a fire ensued. American Honda, a wholly owned subsidiary of Honda Ltd., is authorized to do business in New Jersey and was promptly served. A year later, the court authorized service of process on Honda Ltd. through service on a Washington D.C. law firm acting as its agent, it was effected accordingly and Honda Ltd. became a defendant.

Summary judgment was granted in favor of American Honda based on its contention that plaintiff's suit was barred by the statute of limitations. In a separate opinion filed this day, we have affirmed that judgment against plaintiff. Here we deal with the appeal of defendant Honda Ltd. which contends that the court lacked in personam jurisdiction over it and that, in any event, it, too, should be afforded the protection of the statute of limitations, *N.J.S.A.* 2A:14-2.

In December 1977, American Honda notified the National Highway Traffic Safety Administration of its intention to recall certain motorcycle models because a defect had been discovered in the fuel filler cap release mechanism. Notices of the defect were forwarded to owners of the recalled motorcycles, including the 1972 Honda CB350,

in December 1977, but plaintiff claims he was unaware of the recall notice until July 1978 when so advised by his neighbor. Hence, he contacted counsel and suit was instituted on October 30, 1978. Appellant does not question the propriety of plaintiff's certification that after diligent inquiry and effort, personal service could not be made on any servant of Honda, Ltd., within this state, and that since the corporation is a foreign corporation with no place of business in this state, as far as service of process is concerned, it may be made by registered or certified mail return receipt requested to a registered agent. *R.* 4:4-4(c)(1). However, appellant attacks the ruling in favor of in personam jurisdiction, asserting lack of minimum contacts. Additionally, assuming *arguendo* that there is jurisdiction, it seeks protection of the statute of limitations.

Historically, jurisdiction was based upon a court's de facto authority over the person of the individual. *Pennoyer* v. *Neff*, 95 *U.S.* 714 (1878). Accordingly, the physical presence of a defendant within the jurisdiction was critical to a binding judgment. However, in *Int'l Shoe Co.* v. *Washington*, 326 *U.S.* 310 (1945), the Supreme Court extended the concept of due process to include in personam jurisdiction over a defendant not present within the territory of the forum provided he has "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play.'" *Id.* at 316. *See Milliken* v. *Meyer*, 311 *U.S.* 457, 463 (1940).

Nevertheless, the "minimum contacts" requirement, in order to satisfy due process, requires that the defendant have some contacts, ties, or relations with the forum state for in personam jurisdiction or that "a corporation exercis[e] the privilege of conducting activities within a state" thus enjoying the benefits and protection of its laws. *Int'l*

Shoe Co. v. *Washington, supra,* 326 *U.S.* at 319. Since 1945 there has been a discernible trend in the direction of expanding of in personam jurisdiction to the extent that, in 1974, a New Jersey Federal District Judge wrote that

> when a manufacturer deliberately seeks to profit from marketing its products in a state, he is doing business within that state as to each transaction, whether he does so by an agent, indirectly by mail or even more indirectly through a third party, who may have an exclusive distributorship. In such case there is nothing unfair, unjust or violative of due process standards in imposing *'in personam'* jurisdiction over such a manufacturer in an action predicated upon that transaction.
>
> Indeed, under such circumstances it would be fundamentally unfair for those who purchased products in New Jersey, relying on the protection of New Jersey's laws and courts to assure that the New Jersey's standards of fitness and warranties would be maintained, to be denied adjudication of their claims, and forced to travel throughout this nation, perhaps the world, seeking a forum in which the manufacturer of these goods was actually present. [*Gelineau* v. *New York Univ. Hosp.,* 375 *F. Supp.* 661, 667 (D.N.J. 1974)]

Two years after that decision, a Federal District court in Nebraska under circumstances similar to those here present, involving this very appellant corporation, denied its motion to dismiss for lack of in personam jurisdiction. *Hetrick* v. *American Honda Motor Co., Inc.,* 429 *F. Supp.* 116 (D. Neb. 1976). There, addressing the due process issue, the court said: "Where a foreign defendant has rea-

son to know that its products, traveling through interstate commerce will reach an ultimate consumer in any state of the United States, due process is satisfied." *Id.* at 118. Furthermore, it was reasoned that "it would be fundamentally unfair to allow a foreign manufacturer to insulate himself from the jurisdiction of the courts by use of an exclusive distributor." *Id.* at 118-119.

Our state courts have been active in interpreting and applying the minimum contacts test requiring that "the quality and nature of the contacts [be] such that maintenance of the suit does not offend 'tradition notions of fair play and justice.'" *Feldman* v. *Bates Manufacturing Co.*, 143 *N.J. Super.* 84, 89 (App. Div. 1976). *See Trustees of Structural and Ornamental Iron Workers Fund* v. *Huber*, 136 *N.J. Super.* 501, 505 (App. Div. 1975) certif. den. 70 *N.J.* 143 (1976). The necessary minimum contact may be found in the relationship between a foreign manufacturer and its New Jersey distributor. *Certisimo* v. *Heidelberg*, 122 *N.J. Super.* 1 (Law Div. 1972), aff'd sub nom *Van Eeuwen* v. *Heidelberg Easter, Inc.*, 124 *N.J. Super.* 251 (App. Div. 1973). Maintenance of such a suit does not offend the concepts of fair play and substantial justice. This is particularly true where as seems apparent here, the manufacturer-distributor relationship is an active one and explicitly designed to provide and ensure the sale of the foreign corporation's products. Obviously, the foreign corporation enjoyed substantial revenue from the sales within this state.

The most recent application of the minimum contacts standard by the United States Supreme Court, while rejecting long-arm jurisdiction, provided dictum entirely applicable here. In *World-Wide Volkswagen Corp.* v. *Woodson*, 444 *U.S.* 286 (1980), Mr. Justice White stated:

Appendix A

> [I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. [*Id.* at 297]

In the situation *sub judice,* an affidavit of an assistant vice-president of American Honda reveals that appellant manufactures products in Japan and that sales are consummated in that country in accordance with American Honda's orders. All deliveries are made by appellant to American Honda f.o.b. Japan. Nevertheless, American Honda is a wholly owned subsidiary of appellant Honda, Ltd. We are convinced that a foreign manufacturer may not successfully insulate itself completely from suit in this country by such an arrangement where its product is negligently manufactured abroad and delivered for sale here and then avoid responsibility by use of its exclusive agent or distributor. *See Gelineau* v. *New York Univ. Hosp., supra,* 375 *F.Supp.* at 667; *Van Eeuwen* v. *Heidelberg, supra.*

We conclude that appellant's reliance on *World-Wide Volkswagen* is unavailing. Not only is it distinguishable factually in that there the corporation's products were not sold in the forum state but, in addition thereto, the dictum therein is logical and persuasive. Hence, we affirm the ruling of the trial judge denying appellant's motion to dismiss the complaint for lack of in personam jurisdiction.

Appellant's next argument has some surface appeal. Honda Ltd., reasons that if in personam jurisdiction may

be acquired simply by serving its legal agents in Washington D.C., then it is amenable to process and there is no reason to deny operation of the bar of the statute of limitations, *N.J.S.A.* 2A:14-2. Furthermore, it suggests that failure to apply that bar in this case and the statutory justification for tolling the statute under these circumstances, *N.J.S.A.* 2A:14-22, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution. Presumably, to support that argument, appellant could show that the very same legal agent ultimately served with process in 1979 was equally available in 1976, before the two year period of limitations had expired.

Any lingering concern about the propriety and constitutionality of the statutory provision which tolls the statute of limitations with respect to claims against a foreign corporation not represented in this state by anyone upon whom service of process can be made, *N.J.S.A.* 2A:14-22, has been dissipated by recent decisions of the New Jersey Supreme Court and the Third Circuit Court of Appeals, *Velmohos* v. *Maren Engineering Corp.*, 83 *N.J.* 282 (1980) and *Hopkins* v. *Kelsey-Hayes, Inc.*, 628 *F.*2d 801 (3 Cir. 1980.

Velmohos involved a suit against two corporations of the State of Illinois, the designer and manufacturer of an allegedly defective shredder-baler. Since neither defendant maintained a registered office in this state or had agents for service of process located in New Jersey, the provisions of *N.J.S.A.* 2A:14-22 were held to have tolled the statute of limitations although long-arm service could have been made outside of this state within the two year period.

Justice Pashman reasoned that the statutory language "not represented in the state by any person or officer upon whom summons or other original process may be served"

is not interchangeable with "not amenable to service." *Velmohos* v. *Maren Engineering Corp., supra,* 83 *N.J.* at 288. Therefore, "unrepresented, foreign corporations subject to long-arm service are not exempt from *N.J.S.A.* 2A:14-22. *Ibid.*

The *Velmohos* court noted that *N.J.S.A.* 2A:14-22 (originally *R.S.* 2:24-7) was amended in 1949 for the express purpose of exempting "from the statute domestic corporations and those foreign corporations maintaining representatives in New Jersey." *Id.* at 289. Prior to 1949, the tolling provision did not deal with the foreign corporate defendant at all. *Ibid.* As the statement accompanying the 1949 Assembly Bill indicated: "'Foreign corporations *licensed to do business in New Jersey* are not deprived by judicial construction of the benefit of the statute of limitations. The purpose of this bill is to correct that situation.'" *Id.* at 290 (emphasis added). Obviously, amenability to service is not the appropriate test. Since the legislature "acted to remove only represented corporations from the tolling provisions of *N.J.S.A.* 2A:14-22," absent express language "incorporating amenability to long-arm service as an exemption from the tolling statute, that class of foreign corporations remains subject to its effect." *Id.* at 292-293 (footnote omited)." "[W]hatever hardship on foreign corporations might be caused by continued exposure to suit can be easily eliminated by the designation of an agent for service of process within the State." *Id.* at 293 n. 10; *Lemke* v. *Bailey,* 41 *N.J.* 295 (1963); *Govan* v. *Trade Bank and Trust Co.,* 109 *N.J. Super.* 271 (App. Div. 1970).

Appellant also projects the argument that "there are Honda dealers readily found in the yellow pages of any telephone directory," thus suggesting that Honda's high visibility warrants the conclusion that service could properly be effected in this state. The argument lacks force.

Appendix A

R. 4:4-(c) (1) deals only with "amenability" to service of process. *N.J.S.A.* 2A:14-22 tolls the statute of limitations with regard to foreign unregistered corporations "not presented in this state by a person or officer" for service of process. Without regard for the unlikely proposition that Honda dealers are agents of Honda, Ltd., the tolling provision of the statute refers to individuals who "represent" rather than those who perform details or who may be "minor functionaries" of the foreign corporation. *Hopkins* v. *Kelsey-Hayes, Inc., supra,* 628 *F.*2d at 808: "[T]he statutory tolling provision contemplates a much more significant corporate figure or presence—one capable of 'representing' the corporation—than does the service rule." *Ibid.*

Velmohos and *Hopkins* leave no room for doubt that the statute of limitations does not bar plaintiff's action against Honda Ltd. Rather, the tolling provision, *N.J.S.A.* 2A:14-22, preserves plaintiff's claim under the circumstances, there being no representative of appellant in this state. Hence, we affirm the determination of the trial judge in that regard.

Defendant's constitutional argument that *N.J.S.A.* 2A:14-22 violates the equal protection clause has been put to rest by the Supreme Court in *Lemke* v. *Bailey, supra,* 41 *N.J.* at 303 and, much more recently, in *Volmohos,* as demonstrated by the following comment:

> The flaw in defendants' argument is that it recognizes as rational only a distinction based on the impossibility of obtaining jurisdiction over a foreign corporation. It refuses to acknowledge that among amenable foreign corporations there are degrees of difficulty in effecting service. A recognition of these degrees of difficulty supplies a present rational basis for distinguishing between represented corporations and those unrepresented but amenable to long-arm service. [83 *N.J.* at 295].

The *Hopkins* court also addressed the equal protection argument in the following paragraph:

> Since long-arm service is more difficult to achieve than service within the state, it is not irrational for New Jersey to distinguish between two classes of foreign corporations. Those foreign corporations which are represented in New Jersey, and are thus more readily available to plaintiffs, are afforded limitations protections. On the other hand, the limitations statutes are tolled against foreign corporations which are not represented in New Jersey and thus are not as available to New Jersey plaintiffs. This distinction between represented and non-represented foreign corporations reflects the pragmatic difficulties which may be encountered by plaintiffs suing foreign corporations. Since service of process under the long-arm statute is more difficult and time-consuming to achieve than service within the state, and since out-of-state non-represented corporate defendants may be difficult to locate let alone serve, tolling the statute of limitations protects New Jersey plaintiffs and facilitates their lawsuits against such defendants. Because the tolling provision fulfills the legitimate state purpose of easing the special burdens of suits against non-represented foreign corporations, we cannot say that the distinction which it recognizes is irrational. [628 *F.*2d at 810-811 (footnote omitted)].

Accordingly, the order of the trial court denying the motion of Honda Motor Co., Ltd. of Japan for summary judgment, is affirmed and the matter is remanded for trial.

APPENDIX B

Order of the Superior Court of New Jersey, Law Division, Middlesex County, Striking Honda Ltd's Fifth and Sixth Affirmative Defenses

(Filed—February 28, 1981)

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: MIDDLESEX COUNTY

Docket No. L-9016-78

Civil Action

WALTER P. COONS,

Plaintiff,

vs.

HONDA MOTOR CO., LTD. of JAPAN, et al.,

Defendants.

This matter having been opened to the Court by Robert H. Jaffe, P.A., attorneys for the plaintiff, Walter P. Coons, for an order striking the defendant's fifth and sixth affirmative defenses, Robert H. Jaffe, Esq., appearing and John I. Lisowski, Esq. appearing in opposition thereto and in support of motions to dismiss or, alternatively, for summary judgment; and for good cause shown;

It is on this 25th day of February, 1980;

Appendix B

ORDERED THAT there be stricken from the answer of the defendant Honda Motor Co. Ltd. of Japan its fifth affirmative defense of lack of jurisdiction;

IT IS FURTHER ORDERED THAT there be stricken from the answer of the defendant its sixth affirmative defense concerning the statute of limitation;

AND IT IS FURTHER ORDERED THAT the motions of defendant Honda Motor Co., Ltd. of Japan to dismiss the complaint or, alternatively, for summary judgment are denied.

HERMAN L. BREITKOPF, J.S.C.

APPENDIX C

Order of the Supreme Court of New Jersey Denying Motion for Leave to Appeal

(Filed—April 1, 1981)

SUPREME COURT OF NEW JERSEY

M-832 SEPTEMBER TERM 1980

WALTER P. COONS,

Plaintiff-Respondent,

v.

AMERICAN HONDA MOTOR CO., INC., et al.,

Defendants-Movants.

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 31st day of March, 1981.

STEPHEN W. TOWNSEND
Clerk

APPENDIX D

Notice of Appeal

IN THE

SUPERIOR COURT OF THE STATE OF NEW JERSEY,
APPELLATE DIVISION

Docket No. A 2857-79

HONDA MOTOR COMPANY, LTD.,

Appellant,

vs.

WALTER P. COONS,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Honda Motor Company, Ltd., the above-named appellant, hereby appeals to the Supreme Court of the United States from the final judgment of the Superior Court of New Jersey, Appellate Division, affirming the application of the tolling provision of the statute of limitations and determining its constitutionality for a foreign corporation not registered to do business in the State of New Jersey, entered in an action

Appendix D

Docketed as A 2857-79 on December 29, 1980. The New Jersey Supreme Court denied a motion for leave to appeal on behalf of Honda Motor Company, Ltd., on March 31, 1981.

This appeal is being taken pursuant to 28 U.S.C. Sec. 1257(2).

MORGAN, MELHUISH, MONAGHAN & SPIELVOGEL
301 South Livingston Avenue
Livingston, New Jersey 07039
(201) 994-2500
Attorneys for Appellant,
Honda Motor Company,
Ltd.

By: JOHN I. LISOWSKI

Dated: May 11, 1981

Affidavit of Service

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

JOHN I. LISOWSKI, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am an Attorney at Law of the State of New Jersey and am a partner in the law firm of Morgan, Melhuish, Monaghan and Spielvogel, Esqs., attorneys for appellant, Honda Motor Company, Ltd., in the above-captioned matter.

2. On May 11, 1981, I served a copy of the within Notice of Appeal to the Supreme Court of the United States upon the Clerk of the Supreme Court of New Jersey, and an original and copies to the Clerk of the Superior Court of New Jersey, Appellate Division, by having same deposited in the mailbox, with first class postage prepaid.

3. On May 11, 1981, I served a copy of the within Notice of Appeal to the Supreme Court of the United States upon James R. Zazzali, Attorney General of the State of New Jersey, by having same deposited in the mailbox, with first class postage prepaid, addressed to the Attorney General of the State of New Jersey, Department of Law and Public Safety, State House Annex, Trenton, New Jersey 08625, pursuant to the United States Supreme Court Rules, Rule 28.

4. On May 11, 1981, I served a copy of the within Notice of Appeal to the Supreme Court of the United States upon Robert H. Jaffe, Esq., attorney for the Plaintiff-Appellee, by having same deposited in the mailbox, with first class postage prepaid, addressed to Robert H. Jaffe,

Appendix D

Esq., 8 Mountain Avenue, Springfield, New Jersey 07081, pursuant to the United States Supreme Court Rules, Rule 28.

JOHN I. LISOWSKI

Sworn and subscribed to before
me this 11th day of May, 1981.

PHYLLIS REED
A Notary Public of the State of N.J.
My Commission Expires March 27, 1983.